

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CEMEX, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	02: 02cv1240
	)	
INDUSTRIAL CONTRACTING AND	)	
ERECTING, INC.,	)	
	)	
Defendant/ Third Party	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MINSERCO, INC.,	)	
	)	
Third Party Defendant.	)	

**MEMORANDUM OPINION AND ORDER OF COURT**

June 26, 2006

Presently pending before the Court for disposition is the MOTION FOR SUMMARY JUDGMENT, with brief in support, filed by Third Party Defendant Minserco, Inc. ("Minserco") and the brief in opposition filed by Third Party Plaintiff, Industrial Contracting And Erecting, Inc. ("ICE"). After consideration of the filings of the parties, the arguments of counsel, and the applicable case law, the Motion for Summary Judgment will be granted.

The background of this litigation and the issues surrounding the Motion for Summary Judgment are fully addressed in the Court's Memorandum Opinion and Order of Court filed simultaneously herewith, which granted the Supplemental Motion for Summary Judgment of ICE.

Minserco argues that “collateral estoppel applies to the within matter and Cemex is precluded from asserting a claim against ICE and, therefore, there can be no claim by ICE against this Third Party Defendant.” Mot. at ¶ 12. During oral argument on these motions, counsel for Minserco explained that the Motion for Summary Judgment filed on behalf of Minserco was in conjunction with the Supplemental Motion for Summary Judgment filed by ICE and that the fate of Minserco would be “determined by what happens to ICE.”

ICE has stated that “to the extent that ICE is entitled to summary judgment and to the further extent that Minserco’s Motion for Summary Judgment is consistent with the arguments set forth in the ICE’s motion, ICE does not oppose Minserco’s Motion for Summary Judgment.” Opp’n at ¶ 15.

By Memorandum Opinion and Order of Court issued this date, the Court has found that collateral estoppel and/or res judicata apply and that Cemex is precluded from relitigating its claims against ICE. Accordingly, the Court will also grant the Motion for Summary Judgment filed by Minserco.

An appropriate Order follows.

McVerry, J.

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Plaintiff,	)	
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v.	)	
	)	
MINSERCO, INC.,	)	
	)	
Third Party Defendant.	)	

**ORDER OF COURT**

AND NOW, this 26th day of June, 2006, in accordance with the foregoing Memorandum Opinion, it is hereby **ORDERED, ADJUDGED AND DECREED** that the Motion for Summary Judgment filed by Minserco, Inc. is **GRANTED**.

The Clerk of Court is directed to docket this case closed forthwith.

BY THE COURT:

s/Terrence F. McVerry  
United States District Court Judge

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